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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,214	09/24/2003	David Kisela	RYLZ 2 00939-3	2151
27885	7590	10/14/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			TILL, TERRENCE R	
			ART UNIT	PAPER NUMBER

1744

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/669,214	Applicant(s) KISELA ET AL.	
	Examiner Terrence R. Till	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48, 50-52, 54, 55 and 57-60 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-48, 50-52, 54 and 55 is/are allowed.
- 6) ☒ Claim(s) 57 and 58 is/are rejected.
- 7) ☒ Claim(s) 59 and 60 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 57 and 58 stand rejected under 35 U.S.C. 102(b) as being anticipated by Grey.
3. The patent to Grey discloses a cleaning device comprising: a suction nozzle 50; a dirt collection assembly 40 for collecting dirt and in fluid communication with said suction nozzle, the dirt collection assembly including: a dirt cup 41 configured for collecting a first portion of the dirt, a baffle 66 received within the dirt cup and defining a well (below 69) in the lower region, the baffle providing a tortuous path for air and entrained dirt, the baffle defining a dirt receiving region configured for collecting a second portion of the dirt, and a filter 71 received within the dirt cup; and a source of suction, fluidly connected with said dirt collection assembly, for creating a flow of working air which draws dirt from said suction nozzle into said dirt collection assembly.

Allowable Subject Matter

4. Claims 1-48, 50-52, 54 and 55 are allowed.
5. Claims 59 and 60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed 7/25/05 have been fully considered but they are not persuasive.

7. With respect to the rejection of claims 57 and 58, applicants argue "The Grey patent does not disclose such a cleaning device. The device of Grey can be configured in two different modes, a wet mode (FIG. 1) and a dry mode (FIG. 2). In the wet mode, a separator 60 including an inner compartment 45 with a baffle 66 is inserted in the device. The separator is removed and replaced with a dry mode separator 70 with a filter element 71 for dry pick up. Thus, filter 71 is not present in the Grey device when the inner compartment 45 and baffle 66 are present. Thus when dirt is drawn into the device by working air, there are not three portions of the dirt drawn into the device collected by a dirt cup, a baffle receiving region, and a filter, respectively".

8. The examiner recognizes the operation of Grey, but the claimed subject matter does not preclude the patent to Grey from being used. In response to Applicant's argument, a claim is anticipated if each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference, or that the claimed invention was previously known or embodied in a single prior art device or practice. That is the case of Grey. Grey clearly shows, inter alia, a filter received within a dirt cup. Applicants make no other structural distinction in the claim to overcome Grey. Further, the law of anticipation requires that a distinction be made between the invention described or taught and the invention claimed. The reference will still anticipate the claimed subject matter if it explicitly or inherently discloses every limitation recited in the claims. In re Schreiber 44 USPQ2d 1429 (CAFC 1997).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The publication to Matousek et al. discloses a similar device as is being claimed and is commonly owned by the same assignee. The Japanese publication to Fukuoka discloses a vacuum nozzle that includes a detachable sheet structure.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

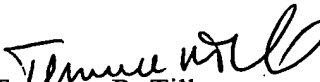
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrence R. Till whose telephone number is (571) 272-1280. The examiner can normally be reached on Mon. through Thurs. and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sun U. Kim can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Terrence R. Till
Primary Examiner
Art Unit 1744

trt